

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT AND ARREST WARRANT

I, Michael J. Freedman, a Special Agent (SA) with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), being duly sworn, hereby depose and state as follows:

1. I am a Federal Law Enforcement Officer within the meaning of Federal Rule of Criminal Procedure 41(a)(2)(C), that is, a government agent engaged in enforcing criminal laws and duly authorized by the Attorney General to request a search warrant. I began as a Special Agent with ATF in August 2019. As part of my training to become an ATF Special Agent, I graduated the Criminal Investigator Training Program at the Federal Law Enforcement Training Center in Glynco, Georgia. I then graduated ATF Special Agent Basic Training in Glynco, Georgia. I have been trained to conduct state and federal criminal investigations. I am currently assigned to the ATF Saint Paul Field Division, Fargo Field Office, and work on the Metro Street Crimes Unit. My duties include but are not limited to the investigation of violations of the federal firearms, arson, and explosives laws, as well as other violations of federal laws and regulations against the United States of America. In connection with my official ATF duties, I investigate criminal violations of federal firearms and narcotics laws. Prior to becoming an ATF Special Agent, I was an Intensive Supervised Release (ISR) Parole Agent in Minneapolis, where I supervised a caseload of high-risk violent offenders on parole with the Minnesota Department of Corrections.

2. I have received specialized training in the enforcement of laws concerning firearms as found in Title 18 and Title 26 of the United States Code, as well as laws concerning controlled substances as found in Title 21.

3. The facts in this Affidavit are derived from my personal observations, my training and experience, as well as information obtained from other law enforcement agents, officers, and witnesses. This Affidavit is merely intended to demonstrate that sufficient probable cause exists for the requested complaint and does not set forth all my knowledge about this matter.

PROBABLE CAUSE

4. Since 2022, the ATF Fargo Field Office has been conducting a joint federal and state criminal investigation into the August 2020 homicide of Santino Marial. Marial was killed after being shot in a drive-by shooting in Fargo, North Dakota. Your affiant is aware that since August of 2022, a federal grand jury has been investigating a conspiracy to distribute controlled substances, murder in furtherance of a drug trafficking crime and firearms offenses related to the shooting death of Marial. Throughout this investigation, numerous suspects have been identified and arrested. Among those identified and arrested are Josh BROOKS and Jesse BURNETT, both of whom were incarcerated at the Cass County jail when the following event took place (BROOKS has since been relocated).

5. Also incarcerated at the Cass County jail, on state charges unrelated to this investigation, were Daniel CISSE and Shaquiel MENDEZ.

6. Based upon the facts set forth in this Affidavit, there is probable cause to believe that BURNETT, CISSE and MENDEZ have committed the following federal violation:

Conspiracy to Tamper with a Witness, 18 U.S.C. §§ 1512(a)(2)(A), 1512(a)(2)(C), 1512(k) and

2.

7. On January 18, 2023, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Special Agent (SA) Freedman was informed that Josh BROOKS, a witness in this joint

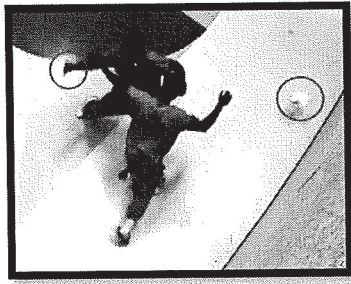
investigation whose information has been relayed to the grand jury, and an inmate at the Cass County Jail, was assaulted by another inmate. The assault took place on January 14, 2023.

8. The assailant, Daniel CISSE, was in custody at the Cass County Jail at the time on several state charges, to include Aggravated Assault, Aggravated Reckless Endangerment, Terrorizing, and commission of a Street Gang Crime. CISSE is known to SA Freedman, and to the Metro Street Crimes Unit, who have been investigating CISSE for his association to firearms and gang related crime in the Fargo area.

9. SA Freedman learned that on January 14, 2023, at approximately 0824 hours, Josh BROOKS, Daniel CISSE, Shaquiel MENDEZ, and Ahmed HASSAN were in the Sigma Recreational Room at the Cass County Jail. The Sigma Recreational Room is a basketball court where inmates can play basketball and exercise.

10. Cass County Jail security footage shows CISSE handing what appears to be a document to BROOKS. BROOKS takes the document and looks at it and they appear to have a conversation. MENDEZ, who is playing basketball with HASSAN, walks up to BROOKS and CISSE and appears to briefly take part in the conversation.

11. It is unclear what MENDEZ says to CISSE and BROOKS, but immediately following MENDEZ's comments, CISSE begins to assault BROOKS, who throws the document to the floor to defend himself. CISSE, armed with a pencil, appears to grab a hold of BROOKS' hair with his left hand, while repeatedly attempting to stab BROOKS in the head and neck with the pencil in his right hand.

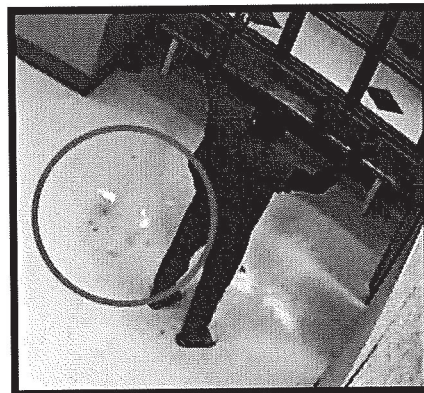


CISSE (top) assaulting BROOKS (bottom) with a pencil (red circle). In the blue circle is the document.

12. The assault continues as CISSE, who is considerably larger than BROOKS, pins BROOKS up against the wall of the basketball court and continues to repeatedly strike him before dragging him across the gym.

13. Over the next several minutes, CISSE continues to strike and stab BROOKS. When the assault is over, blood and hair, presumably torn from BROOKS' head, can be observed on the gym floor.

14. After approximately five minutes, CISSE and BROOKS separate and BROOKS is able to leave the recreational room, at which point CISSE walks over the document, which still lay on the floor, and begins tearing it up into small pieces.

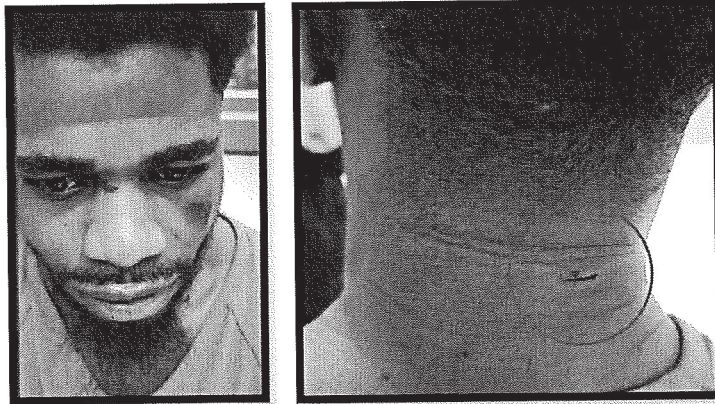


Left: CISSE retrieving document Right: CISSE raising his arms up and dropping the ripped document on the ground

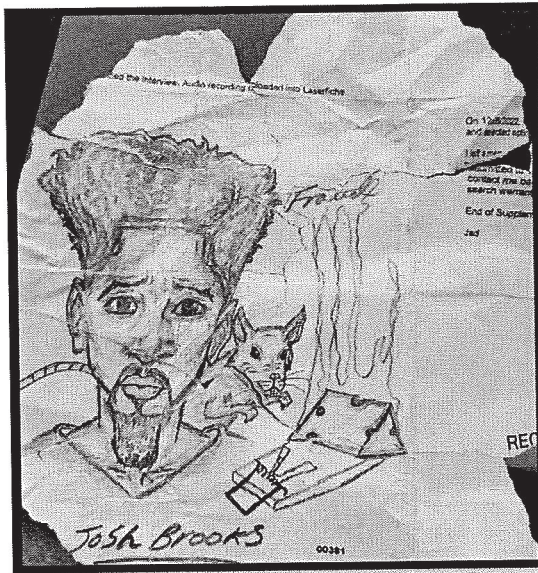
15. It is at this time that Deputy Wonokay, who was on the other side of the door and observed CISSE attempt to strike BROOKS, enters the recreational room and asks CISSE what was going on, to which CISSE replies, "I want to kill that nigga. I fucked him up."

16. As the incident unfolded, MENDEZ and HASSAN appear to stand back and watch as BROOKS is repeatedly stabbed by CISSE. As the incident continues and moves around the room, MENDEZ and HASSAN can be seen glancing over at BROOKS and CISSE, even as they resume playing basketball.

17. After BROOKS and CISSE were secured, deputies began their investigation. Photographs of BROOKS' injuries were documented. BROOKS was stabbed by CISSE in both the face and the neck.



18. Deputies collected the pieces of the document which CISSE tore up upon their arrival, and which footage shows him presenting to BROOKS in the moments prior to the assault taking place. Deputies pieced this document back together to find that it contained a detailed depiction of BROOKS. The drawing is of BROOKS with a rat beside him. Beside the rat is a rat trap, above which is written the word, "Fraud."



19. Moreover, the above depiction of BROOKS was drawn on a page of state discovery from the criminal case in which BROOKS is a defendant, and in which Jesse BURNETT, who also resides in the Cass County Jail, is a co-defendant. Specifically, the page of discovery recovered by deputies includes a supplement by Fargo Police Department Detective Gease, wherein it is documented that BROOKS proffered with law enforcement and provided information on a firearm purchased by BURNETT.

20. It should be noted that at the time of this assault, BROOKS and BURNETT were the only two defendants from their case currently incarcerated at the Cass County Jail. Thus, the discovery could have only come from one of them. It should also be noted that, per the stipulated protective order entered into in state court, neither defendant should have been in possession of physical copies of discovery. BROOKS' attorneys have indicated that BROOKS has not been given any physical copies of his discovery. Your affiant is aware that this Court has authorized the U.S. Attorney's office to share federal investigative materials, including grand jury material, with the Cass County State's Attorney's Office.

21. Following a review of the video footage, investigators conducted interviews with several individuals, to include BROOKS and HASSAN.

22. In an interview on January 19, 2023, BROOKS stated that the “legal document that started the whole thing was Jesse’s,” referring to the state discovery which CISSE appeared to show to BROOKS prior to the assault and indicating that it was BURNETT’s paperwork.

23. BROOKS stated that MENDEZ, who lived in the same unit as BROOKS, was briefly housed with BURNETT before returning to the same unit as BROOKS. BROOKS stated that when MENDEZ returned, he did so with BURNETT’s discovery in his possession.

24. BROOKS stated that prior to the assault, CISSE called him over and said something to effect of “Hey Hustle [BROOKS’ moniker], can you take a look at this paper? I’m having a hard time understanding it.”

25. BROOKS took the document to review and stated that the first thing he saw was the detailed illustration of him with a rat beside him. BROOKS stated that he asked CISSE who drew the picture, at which point CISSE instructed him to continue reading. At this point, BROOKS stated that he read the information regarding his Proffer interview and realized that he was reading discovery from his case.

26. BROOKS asked CISSE where the discovery came from, at which point CISSE deferred to MENDEZ and stated, “MENDEZ, explain to him.” BROOKS then asked MENDEZ about the discovery. MENDEZ then stated, “Jesse BURNETT gave me that. He wants everybody to be aware that this is what you’re doing.” It was shortly after this that the assault occurred.

27. BROOKS stated that approximately three or four days prior to the assault, CISSE and other inmates were joking on the pod about there being a “rat,” however BROOKS did not know at this time that they were referring to him.

28. In an interview with investigators on February 13, 2023, HASSAN stated that he first found out about the discovery on January 13, 2023, the day before the assault. HASSAN stated that his cell was next to that of CISSE and MENDEZ's and, as a result, they could communicate through the vents.

29. HASSAN stated that CISSE possessed the discovery at this time, and that he likely received it from MENDEZ, whom HASSAN stated had briefly lived in the same unit as BURNETT.

30. HASSAN stated that the evening prior to the assault, CISSE solicited help assaulting BROOKS from HASSAN and MENDEZ, however HASSAN and MENDEZ declined to participate, agreeing to instead distract BROOKS so that CISSE could assault him. According to HASSAN, this plan was discussed on the evening of January 13th, and again on the morning of January 14th.

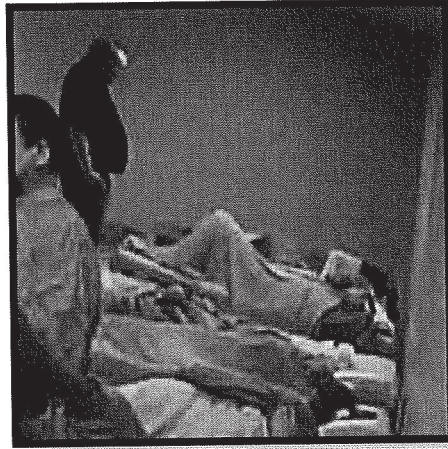
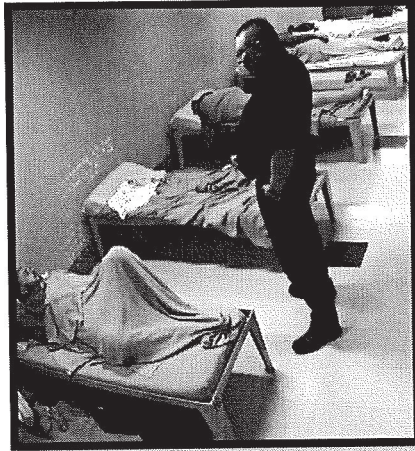
31. HASSAN stated that on the morning of January 14th, CISSE handed him the discovery to read, at which time HASSAN saw the picture of BROOKS. HASSAN stated that CISSE drew this picture.

32. When asked why MENDEZ chose CISSE to give the discovery to, HASSAN stated that MENDEZ knew CISSE would do something about it.

33. HASSAN stated that during the assault, CISSE told BROOKS that he was trying to kill him. BROOKS attempted to get HASSAN and MENDEZ to press the intercom button for help, but they refused.

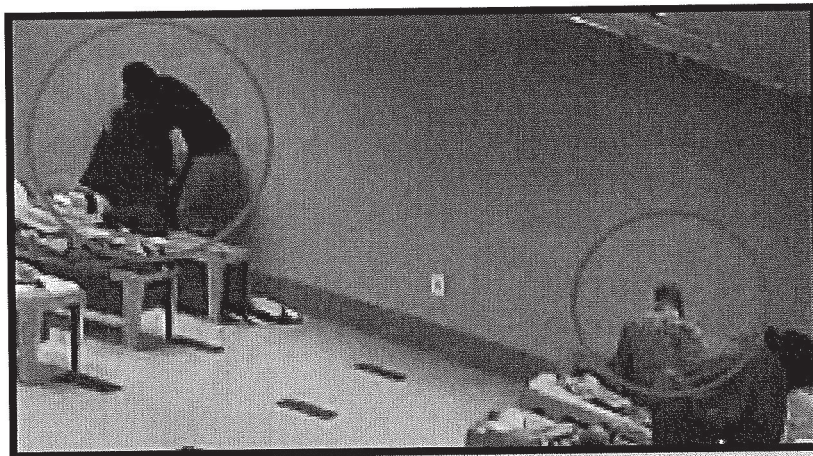
34. Regarding the claim that BURNETT gave the discovery to MENDEZ in a housing unit, SA Freedman reviewed video footage from the dorm in which both BURNETT and MENDEZ were housed.

35. SA Freedman observed that at approximately 0846 on January 12, 2023 (two days prior to the assault on BROOKS), jail staff, standing near the foot of MENDEZ's bed, inform him of the coming transfer.



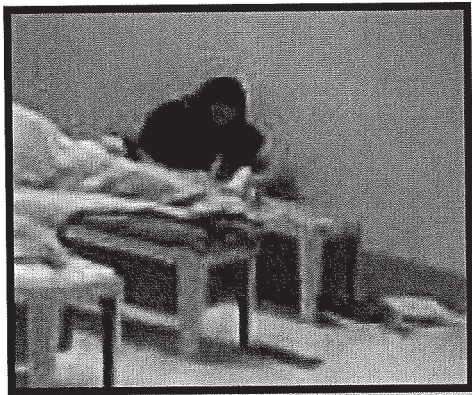
36. After what appears to be a short conversation, the jail staff walks away, at which point MENDEZ begins to converse with another male in a bed nearby, who is BURNETT.

37. MENDEZ and BURNETT converse for approximately nine minutes as MENDEZ appears to pack his belongings prior to his transfer. During this time, BURNETT can be seen going through his belongings, apparently looking for something.



L: BURNETT going through his belongings R: MENDEZ sitting on his bed

38. At approximately 0855, BURNETT can be seen looking through what appear to be white documents near his bed, before standing up, walking over to MENDEZ, and handing MENDEZ the documents. MENDEZ can then be seen reading over the documents that BURNETT handed him.

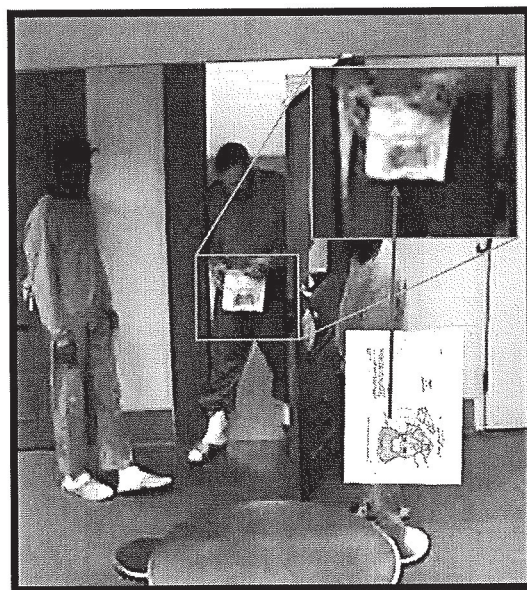


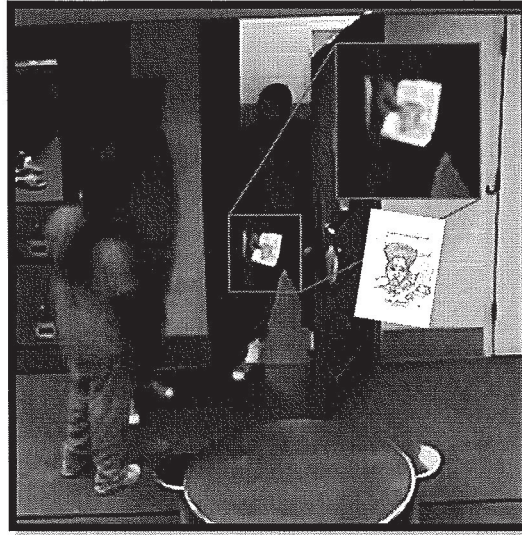
Top left: BURNETT looking through his documents Top right and bottom: BURNETT handing documents to MENDEZ



L: Documents (in red circle) being handed to MENDEZ R: MENDEZ reviewing documents

39. On or about February 10, 2023, SA Droske with the North Dakota Bureau of Criminal Investigation was able to digitally enhance two photographs, which were taken from Cass County Jail's surveillance footage prior to the assault on BROOKS. The still photos appear to show MENDEZ standing in a housing unit, holding papers, and talking to other inmates. In the enhanced photos, it appears that MENDEZ is, in fact, holding the drawing of BROOKS by CISSE.





CONCLUSION

40. Based upon the facts and information contained in this Affidavit, it is respectfully submitted that sufficient probable cause exists to believe that Jesse BURNETT, Daniel CISSE and Shaquiel MENDEZ have committed the following offense: Conspiracy to Tamper with a Witness, 18 U.S.C. §§ 1512(a)(2)(A), 1512(a)(2)(C), 1512(k) and 2.

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FREEDMAN
Date: 2023.03.13 15:00:40 -05'00'

Michael Freedman
Special Agent
Bureau of Alcohol, Tobacco, Firearms and
Explosives

Sworn to me and signed ~~in my presence~~ [by telephone] this 10th day of March 2023.

Alice R. Senechal
United States Magistrate Judge